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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,409	10/01/2003	Thomas M. Fudali	66396-072	5122

7590 08/14/2007  
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Washington, DC 20005-3096

EXAMINER
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BODDIE, WILLIAM

ART UNIT	PAPER NUMBER
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2629

MAIL DATE	DELIVERY MODE
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08/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/674,409	Applicant(s) FUDALI ET AL.	
	Examiner William L. Boddie	Art Unit 2629	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 10-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

1. In an amendment dated, March, 22<sup>nd</sup>, 2007, the Applicant amended claims 1 and
5. Currently claims 1-9 are pending.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3 and 4 recite the limitation "each of the ten" and "each of the six", respectively in line 2. There is insufficient antecedent basis for this limitation in the claim.

Specifically, the Applicant has previously defined the elements as "fewer than ten" and "at least six." The subsequent referrals to these elements seems to indicate that the elements are now limited to only 10 and 6.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Banks et al. (US 6,603,494).

**With respect to claim 1**, Banks discloses, a user interface for invoking a function of a diagnostic instrument (141 in fig. 1), the user interface comprising:

a first navigational menu (252 and 218 in fig. 5) including at least one display element (222-226, and 256-266 in fig. 5), the at least one display element having a touch sensitive active region (276 in fig. 5; col. 7, lines 57-60) and a graphical representation of functionality invoked by user selection of the display element (258, for example in fig. 5), wherein the touch sensitive active region includes more display area than the corresponding graphical representation (clear from fig. 5); and

a second navigational menu (278 in fig. 5, for example) configured to be displayed responsive to contact on the touch sensitive active region of the at least one display element (clear from figs. 5-6, for example), the second navigational menu including a selection group related to a test suite of the diagnostic instrument (workflow icons, 284-290 in fig. 5).

**With respect to claim 2**, Banks discloses, the user interface of claim 1 (see above), wherein the selection group includes a plurality of display elements (284-290 in fig. 5), each of the plurality of display elements having a touch sensitive active region to enable user selection of the plurality of display elements (col. 7, lines 57-60).

**With respect to claim 3**, Banks discloses, the user interface of claim 1 (see above), wherein the selection group includes fewer than ten display elements to permit

discrete touch sensitive selection of each of the ten display elements (only 4 for example in fig. 5).

**With respect to claim 5**, Banks discloses, the user interface of claim 1 (see above), wherein the at least one display element comprises

a textual description of functionality invoked by user selection of the display element (schedule, close, analyze, for example in fig. 5).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banks et al. (US 6,603,494) in view of Ross et al. (US 5,859,628).

**With respect to claim 4**, Banks discloses, the user interface of claim 1 (see above), wherein the first navigational menu includes at least six display elements (222-226 and 256-264 in fig. 5).

Banks does not expressly disclose, wherein the navigational menu display elements are sized to permit finger tip selection.

Ross discloses, a personal onboard information system, comprising a user interface comprising:

a first navigational menu (fig. 6d) which includes at least six display elements (exit, more, road manager, for example in fig. 6d), each of the six display elements

having a discrete touch sensitive active region sized to permit finger tip selection (col. 7, lines 9-12).

Ross and Banks are analogous art because they are both from the same field of endeavor namely, touch screen user interface designs.

At the time of the invention it would have been obvious to one of ordinary skill in the art to size the display elements of Banks to permit finger tip selection as taught by Ross.

The motivation for doing so would have been to allow the user to more easily recognize the icons and text of the screen (Ross; col. 7, lines 11-12; for example).

**With respect to claim 6**, Banks discloses, the user interface of claim 1 (see above).

Banks does not disclose, wherein the touch sensitive active region comprises an approximately circular shape with a diameter of at least 3/8 inch.

Ross discloses, a user interface (fig. 6d), wherein a touch sensitive active region comprises an area having a polygonal shape of at least 3/8 square inch (clear from fig. 6d).

At the time of the invention it would have been obvious to one of ordinary skill in the art to size the display elements of Banks to permit finger tip selection as taught by Ross.

The motivation for doing so would have been to allow the user to more easily recognize the icons and text of the screen (Ross; col. 7, lines 11-12; for example).

The currently claimed differences in shape and size over Banks in view of Ross are not seen as patentably distinct from the prior art. In short whether the touch regions are polygons or circular is immaterial and insignificant. The device will not perform differently should the user interface use polygons or circular shapes for the touch regions. The Applicant is directed to section 2144.04.IV.A-B of the MPEP.

**With respect to claims 7 and 8,** Banks discloses, the user interface of claim 1 (see above).

Banks does not expressly disclose, wherein the touch sensitive active region comprises an area having a polygonal shape of at least  $\frac{1}{4}$  square inch or that the touch sensitive active region comprises at least  $\frac{1}{10}$  of the screen area.

Ross discloses, a user interface (fig. 6d), wherein a touch sensitive active region comprises an area having a polygonal shape of at least  $\frac{1}{4}$  square inch (clear from fig. 6d) and that the touch sensitive active region comprises at least  $\frac{1}{10}$  of the screen area (also clear from fig. 6d).

At the time of the invention it would have been obvious to one of ordinary skill in the art to size the display elements of Banks to permit finger tip selection as taught by Ross.

The motivation for doing so would have been to allow the user to more easily recognize the icons and text of the screen (Ross; col. 7, lines 11-12; for example).

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banks et al. (US 6,603,494) in view of Cross et al. (US 7,154,481).

**With respect to claim 9**, Banks discloses, the user interface of claim 1 (see above).

Banks does not expressly disclose, wherein the first and second navigational menus are displayed on a touch screen device sized and positioned so as to be responsive to a gloved finger.

Cross discloses, a touch screen wherein the device is sized and positioned so as to be responsive to a gloved finger (col. 4, lines 47-49).

Cross and Banks are analogous art because they are from the same field of endeavor namely, touch screen device design and implementation.

At the time of the invention it would have been obvious to one of ordinary skill in the art to construct the touch screen of Banks in the manner of Cross to ensure that the device is responsive to a gloved finger.

The motivation for doing so would have been as a convenience and ease of use to the user to not have to remove any gloves in order to operate the machine. This is especially applicable to Banks, which is likely to be used in medical arenas where gloves are commonly worn.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Boddie whose telephone number is (571) 272-0666. The examiner can normally be reached on Monday through Friday, 7:30 - 4:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sumati Lefkowitz can be reached on (571) 272-3638. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2629

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Wlb  
8/1/07

  
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SUPERVISORY PATENT EXAMINER